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IN THE

# Supreme Court of the United States

October Term, 1963

No. 433

CHARLES W. COCKFIELD,

*Petitioner*

*vs.*

COMMONWEALTH OF PENNSYLVANIA

On Petition For Writ of Certiorari To The Supreme Court of Pennsylvania

# BRIEF FOR RESPONDENT IN OPPOSITION

LOUIS F. MCCABE
*Assistant District Attorney*

ARLEN SPECTER
*Assistant District Attorney*
*Chief, Litigation Division*

JAMES C. CRUMLISH, JR.
*District Attorney*

Room 666, City Hall
Philadelphia, Pa. 19107

THE LEGAL INTELLIGENCER, 10 S. 37TH ST., PHILA. 4

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## QUESTIONS PRESENTED

1A. Where the Decree of the Supreme Court of Pennsylvania sought to be reviewed overruled the order of the Court of Oyer and Terminer of Philadelphia County, granting the prayer of the petitioner here to suppress certain evidence which petitioner contends were the fruits of an unreasonable search and seizure, is that Decree final so as to warrant pre-trial examination by this Court?

1 and 2 The questions as stated in the Petition are apt for considering subsidiary questions which may arise.

## JURISDICTIONAL STATEMENT

Jurisdiction is contested upon the ground that the decree rendered by the Supreme Court of Pennsylvania, the highest court of that state in which a decision could be had, is not a final decree, but is merely interlocutory.

## STATEMENT OF THE CASE

The statement of the case in the Petition is a fair presentation of the facts. Respondent believes that small additions and corrections will make for a more complete grasp of the facts.

Line 3: The information received at the scene of the fire was that there was evidence that an accelerant had been applied, and, further, that petitioner had used physical violence and had once even held a knife to the throat of the young mother, who, with her two small children, died in the fire (6a) and lastly that a fire of unknown origin, but causing small damage, had broken out in the same dwelling on a prior occasion (8a).

Line 12: The car belonging to petitioner was warm at about 5:30 A.M., the morning of the fire, when the officers located it, parked around the corner from petitioner's house (14a-15a). The fire broke out about 2:30 A. M.

Line 17: The toilet tissue was charred, as if from fire (17a).

Line 19: Through a typographical error, there appears the phrase "beneath the car . . .", it should read "beneath the can. . . ." (14a, 16a).

## ARGUMENT

### 1A. The Petition Must Fail for Want of Finality.

The need for strict adherence to the rule requiring finality in the decree or order complained of is many times multiplied in comparison to the situation ten or fifteen years ago. Under present practice and attitudes, the State procedures are regarded by defendants as primarily springboards to federal jurisdiction. This Court, fifteen years ago, emphasized the need of strict scrutiny in *Republic Natural Gas Co. v. State of Oklahoma*, 334 U.S. 62, 68 S. Ct. 972, a civil suit of very great importance. The opinion (334 U.S. at 69-72; 68 S. Ct. 977-8) pointed out the burden upon petitioner of affirmatively establishing this Court's jurisdiction; the policy against premature constitutional adjudications, against fragmentary review, leading to the ruling found in many cases that a case must await its culmination in the judicial process of the State before being ripe for consideration by this Court. It was reiterated that all of petitioner's constitutional objections are of course preserved.

In *Wilson v. Schnettler*, 365 U.S. 381, 384, 81 S. Ct. 632, 634-5, in rebuffing the attempt through equity proceedings to side-track criminal charges, this Court pointed out that if, at the criminal trial, the State Court (Illinois) adhered to its interlocutory order on the suppression issue to petitioner's prejudice, he has an appeal to the Supreme Court of that State, and a right, if need be, for review by the Court of any federal questions involved.

The lack of finality of an order denying a motion to suppress evidence has been upheld in Pennsylvania in *Commonwealth v. Diggs*, Superior Court, No. 141, October Term, 1962, in which the Superior Court sustained a motion by the Commonwealth to quash an appeal by defendant from such order.

The complaint of harm to a defendant in thus compelling him to undergo the hardships of trial was held unavailing in *Parr v. United States*, 351 U.S. 513, 518;

76 S. Ct. 912, 917-18 (1956). There it was held that maneuvering by the government to avoid an unfavorable forum was not subject to complaint. The opinion pointed out that the hardships and expense of defending against prosecution, even for an innocent person, is one of the painful obligations of citizenship. Respondent pointed out in its Brief in the Supreme Court (p. 17) that all of those questioned by police in their investigations suffer the invasion of their time and privacy in carrying out the ordinary obligations of members of society. *Mapp v. Ohio*, 367 U. S. 645, was decided upon certiorari after conviction, not upon a motion to suppress.

Petitioner has presented no reasons for the granting of an exception to the basic rule that certiorari will be denied where no terminal point will be reached thereby.

I.—II.

The questions presented by Petitioner are not ripe for consideration by this Court in this case at this stage of the proceedings. Petitioner does not set out circumstances which bring it within the provisions of Rule 19 (a) of this Court, nor does he allege any circumstances persuasive of a condition not indicated in the Rule which should be considered.

There is nothing to indicate that the decision of the Pennsylvania Court is in conflict with any applicable decisions of this Court. There is nothing to bear out a claim that the Supreme Court of Pennsylvania has decided a federal question of substance; certainly the technique used here did not approximate those activities which have been held to oust the jurisdiction of a trial court. No cases holding the contrary have been cited by Petitioner.

The Supreme Court of Pennsylvania states that the search and seizure sought to be reviewed was that which took place April 10, 1960, after the removal of the car with its contents to the police station. Respondent, in its Brief in the Supreme Court of Pennsylvania, concentrated upon the *reasonableness* of the actions of the police (pp. 15-19 of

Commonwealth's Brief). We have seen that a search and seizure before an arrest and while the suspect is eluding capture may be entirely reasonable. We repeat the arguments of the brief that no unreasonable search or seizure was made at any time, either April 7 or April 10.

Similarly, a consideration of the suggestions of Rule 19(b) fails to reveal a reason for the grant of certiorari at this time.

*Eisentrager v. State Supreme Court of Nevada*, 378 P. 2d 526 (1963) involved a search and seizure prior to arrest. A landlady, having made several days' efforts to reach a roomer, without receiving a response, entered the room by means of a pass key. The body of the tenant, obviously the victim of a murder, was in the room. Her paramour, who had posed as her husband, was not present. The actions of the police, summoned by the landlady, in proceeding about their normal homicide investigations, without obtaining a warrant, were upheld. Seizing various articles from the apartment, the officers sealed the door, returning at will for further investigation. The paramour surrendered to the police (528) during the evening of the day the body was discovered, and the investigation continued while he was in custody. No warrant was ever procured. The Supreme Court of Nevada upheld the police activities as reasonable and in the line of duty (530).

California has likewise recognized that a search made before arrest is reasonable, the test being reasonable cause to believe a felony has been committed. *People v. Sayles*, 140 Cal. App. 2d 657, 295 P. 2d 579.

The record which this Court has before it is lacking in detailed coverage which is necessary to decide a constitutional question in which all of the surrounding circumstances are to be considered in testing the reasonableness of the search and seizure. The finding of the Supreme Court of Pennsylvania, that the search and seizure under examination before them was that of January 10th, would not bind a jury which, with all of the facts presented through a complete roster of witnesses, might well find that the search of

the car and the removal of the car to the station house on January 7th was a de facto seizure. The facts simply were not developed at the sketchy proceedings on the motion to suppress. Surely this is not the case or the record upon which to base definitive rulings such as petitioner suggests.

## CONCLUSION

Petitioner has not presented a case in which the rules governing certiorari should be stretched in the interest of a non-existent important federal question.

Respectfully submitted,

LOUIS F. MCCABE
*Assistant District Attorney*

ARLEN SPECTER
*Assistant District Attorney*
*Chief, Litigation Division*

JAMES C. CRUMLISH, JR.
*District Attorney*